

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

MFA.No. 265 of 2003()

OPMV.964/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI

APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE CO.LTD.,
MANJERY, REPRESENTED BY ITS ASST.MANAGER
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/RESPONDENTS, 1, 2, 4 & 5

1. KARUVATHIL DAVADAS,
S/O. NARAYANAN, KARUVATHIL HOUSE,
UTHIRAMPOYIL P.O., PULLANKODE.
2. MANHAPPLAM ABDUL LATHEEF,
S/O. MOHAMMED, MANHAPPALAM VEEDU,
P.O.KARALAI.
3. N.ACHUTHAN, S/O. NARAYANAN NAIR,
NAMBI MADATHIL HOUSE, P.O.KAMAPURAM.
4. N.A.SHAJI, S/O. ABDULLA WAHAB,
NEDIYARIKKAL HOUSE, P.O.KOODERANCHI.
5. UNITED INDIA INSURANCE CO.LTD.,
NILAMBUR.

R1 BY ADV. SRI.M.P.PRAKASH
R2 BY ADV.SRI.BABU S. NAIR
R5 BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.265 of 2003

Dated, this the 22nd day of November, 2007

JUDGMENT

The third respondent insurer in O.P.(MV) No.964/1997 on the file of the Motor accidents Claims Tribunal, Manjeri is the appellant. Appeal is filed against an award passed by the Tribunal by which it awarded an amount of Rs.28,300/- to the first respondent claimant on account of the injury sustained by him in a motor vehicle accident and directed the appellant to pay the amount. First respondent in this appeal sustained injuries in a motor vehicle accident. He filed Original Petition claiming compensation. It was averred that he was travelling in a jeep owned by the fourth respondent and insured with the fifth respondent. It was also averred that when the jeep reached the place of accident a stage carriage bus bearing registration No.KLL 6237 driven by the second respondent and owned by the third respondent came in a rash or negligent manner and hit against the jeep causing injuries to the first respondent. It was averred that the accident occurred due to the negligence of the driver of the bus. Driver of the bus contested but the owner of the bus did not appear and contest. Appellant insurer of the bus contended that though the policy was issued the same was subsequently cancelled. It was contended that the owner of the vehicle obtained a policy issuing a cheque but subsequently the cheque bounced. So the policy issued was cancelled. Tribunal found that the accident occurred due to the negligence of the driver and

directed the appellant insurer to pay the entire compensation. Challenging that award the insurer has filed this appeal.

2. Tribunal found that the accident occurred due to the negligence of the driver and the first respondent claimant is entitled to get a compensation of Rs.28,300/-. Since these findings are based on evidence, I do not find any reason to interfere with the same. The only question arising for consideration is whether the direction of the Tribunal to the appellant insurer to pay compensation is legal. Appellant produced Ext.B1 dishonoured cheque, Ext.B2 memo and also Ext.B4 postal receipt to show that on receipt of the dishonoured memo the insurer cancelled the policy. The fact that the policy issued was subsequently cancelled is not denied by the owner of the bus. Though there was a valid policy on the date of accident the same was subsequently cancelled on account of dishonour of cheque. It is trite law in such a case the insurer has to deposit the amount to indemnify the insured and then recover the same from the insurer.

In the result, appeal is allowed in part. The award passed by the Tribunal is modified. Appellant is directed to deposit the amount as ordered by the Tribunal and the appellant is allowed to recover the amount so deposited from the owner of the vehicle by executing the award passed in this case.

C.M.P.No.1208/2003 will stand dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**

cks

MFA No.265/2003

-: 3 :-

K.PADMANABHAN NAIR, J.

M.F.A.No.265 of 2003

JUDGMENT

22nd November, 2007.